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Aging Committee
Public Hearing: 2/5/13

Testimony in Support of Raised Bill 523

An Act Concerning the Return of a Gift to a Person in Need of Long Term Care Services

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I am writing on behalf of the Connecticut Bar Association in support of Raised Bill No. 523. This bill concerns the length of a penalty in the Medicaid program resulting from a gift of an asset. Raised Bill 523 allows the reduction in the length of a penalty when some of the gift is returned. This is commonly referred to as "partial return."

Raised Bill 523 would reinstate the practice followed in Connecticut for decades until 2011. The partial return rule is applied in every state in New England, all of the Northeast and in fact in almost all of the states in the nation.

The partial return rule was changed to a "full return" rule by Public Act 11-44, now codified at C.G.S. 17b-261a. As a result of that act, there is no reduction in the penalty unless all of the gift is returned.

In many cases, people who have received gifts may still have some but not all of the gift. This is because in most cases, the gift was made initially to help a family member in distress who may very well have spent it. The recipient of the gift was commonly out of work or sick, facing foreclosure and mounting medical bills.

In the past, when people realized that the gift they received from a family member may result in a denial of Medicaid, they considered returning whatever they had left of it.

Now, the full return rule is a disincentive for family members to return those portions of the gift. Because of the full return rule, giving back only a portion of the gift will not reduce the penalty at all. If there is no reduction in the penalty, what is the purpose of returning just a portion of the gift?

As a result of this new full return rule, my colleagues and I believe that there will be less private funds to pay for long term care services available. If only a part of a gift is still available, it will not be returned. And if that is the case, ultimately, then we believe the State of Connecticut will wind up paying more money to cover those services. This is a result no one should desire since it essentially means state funds will pay for long term care services because individuals were discouraged from returning private funds.

The change to a full return rule in 2011 was part of a significant two part change in the Medicaid transfer of asset rules.

The second part of the change from last year allows the State of Connecticut to deny Medicaid to individuals who make gifts with the expectation of receiving a significant portion of the gift back right away in order to obtain Medicaid benefits immediately.

The second part of the change from 2011 is still the law and it is not affected by the change proposed in Raised Bill 523.

There is a positive effect to Raised Bill 523, in that we believe it will encourage people to contribute private funds into the long term care system.

We do not believe that the full return proposal itself standing alone saves the State of Connecticut money.

By the same token, we believe reinstating the partial return rule will not cost the State of Connecticut money. Indeed, we believe this change will make more private funds available to cover the cost of long term care services and thereby decrease the amount ultimately the State of Connecticut will pay for those services.